

WEST BAY BUILDERS

CONTRACT NO. V261C-1096

**VABCA-7021**

VA MEDICAL CENTER  
LIVERMORE, CALIFORNIA

*Kimberly S. Fisher, Esq.*, McInerney & Dillon, P.C., Oakland, California, for the Appellant.

*Anna C. Maddan, Esq.*, Government Trial Attorney, Moreno Valley, California; *Charlma J. Quarles, Esq.*, Deputy Assistant General Counsel; and *Phillipa L. Anderson, Esq.*, Assistant General Counsel, Washington, D.C., for the Department of Veterans Affairs.

### **ORDER DISMISSING APPEAL**

1. The Board, in its October 20, 2003 NOTICE OF DOCKETING AND ORDER TO SHOW CAUSE, noted that, from the documents before it, the appeals appeared to be untimely. Correspondence received from the Appellant indicated that the Appellant received the Final Decision on July 9, 2003. However, the Notice of Appeal was postmarked October 9, 2003, or ninety-two (92) days after receipt of the Final Decision. The *Contract Disputes Act* (CDA), 41 U.S.C. § 601 et seq., provides in § 606 that:

Within *ninety days* from the date of receipt of a contracting officer's final decision under section 605 of this title, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 607 of this title [emphasis supplied]

The time limitation on the filing of an appeal, as a statutory waiver of sovereign immunity, must be strictly construed. Thus, the Board is without discretion to assume jurisdiction over an appeal not filed within ninety days. *Cosmic Construction Co. v. United States*, 697 F.2d 1389 (Fed. Cir. 1982); *Olympus Corporation*, VABCA No. 3550, 92-2 BCA ¶ 24,856; *Surgical Appliance Industries, Inc.*, VABCA No. 3674, 93-1 BCA ¶ 25,364.

2. We granted the Appellant until November 10, 2003 to SHOW CAUSE why this appeal should not be dismissed for lack of jurisdiction, pursuant to Board Rule 5. On November 26, 2003, Appellant notified the Board that they were unable to find any cases to overcome the jurisdictional threshold.

3. Given the facts before the Board and the failure of the Appellant to overcome the timeliness issue, we conclude that we are without jurisdiction to consider this matter. Accordingly, the appeal of West Bay Builders, VABCA-7021, is hereby dismissed pursuant to Board Rule 5.

**IT IS SO ORDERED**

DATE: **December 17, 2003**

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WILLIAM E. THOMAS  
Administrative Judge  
Panel Chairman

We concur:

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RICHARD W. KREMPASKY  
Administrative Judge

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PATRICIA J. SHERIDAN  
Administrative Judge